IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 936 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NASIRBABU NOORMAHMAD SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR SL VAISHYA for Petitioner

MR KT DAVE, APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/04/2000

ORAL JUDGEMENT

#. Sub Divisional Magistrate, Patan, passed an order on May 28, 1999, under section 56(a) of the Bombay Police Act, 1951 ("the Act" for short), externing the petitioner for a period of two years from the areas of districts of Banaskantha, Patan, Kachchh, Sabarkantha and Mehsana,

after taking into consideration the nefarious activities of the petitioner which have involved him in six offences registered against him. Prior to passing the said order, the externing authority gave a notice to the petitioner as required under section 59 of the Act on 15th March, 1999 and after holding an inquiry as required under section 59 of the Act and giving audience to the petitioner, the impugned order of externment came to be passed.

#. The said order was challenged in appeal as provided under section 60 of the Act and the said appeal came to be dismissed by order dated September 29, 1999.

#. Aggrieved by the said order passed in appeal as well as the order of externment, the petitioner has preferred this petition on various grounds. However, Mr. Vaishya, learned advocate for the petitioner has relied only on the ground of delay in passing the order as well as on the ground of externing the petitioner from contiguous districts in the absence of any reason and thereby in the absence of application of mind on the part of the externing authority.

#. Mr. K.T. Dave, learned APP has opposed this petition.

#. On perusal of the notice as well as the order of externment, it is clear that the order is based on the offences registered against the petitioner. The offences relate to years 1994, 1995 and 1997. The last offence is in relation to the incident dated June 1, 1997. Against this, notice came to be issued on March 15, 1999 i.e. after about one year and nine months. There appears to be nothing to indicate any involvement of the petitioner during this period in any of the illegal or anti-social activities. It therefore, cannot be said that there did exist a live link between the act and the order. This delay is not considered by the externing authority which would vitiate the order of externment.

#. Apart from this, the petitioner is ordered to be externed from contiguous districts of Patan, Kachchh, Sabarkantha and Mehsana. The only ground assigned is that it is possible that he may continue his activities staying in those districts with the help of his agents or associates. There appears no material to consider these aspects which would indicate that the petitioner has agents in the contiguous districts which would possiblise this type of activities through his agents or associates. In this regard, the decision in the case of Vrijlal

Mohanlal vs. District Magistrate, Rajkot & another, reported in 3 GLR 807 may be taken into consideration.

#. In view of the above discussion, the order of externment cannot be sustained. The petition deserves to be allowed.

#. The petition is allowed. The impugned orders dated 28.5.1999 passed by Sub Divisional Magistrate, Banaskantha at Palanpur as also the appellate order dated 29.9.99 are hereby quashed and set aside. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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